

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, September 6, 2012
STUDY SESSION MEETING
5:00 p.m.

CALL TO ORDER - The meeting was called to order at 5:00 p.m.

A. ROLL CALL

PRESENT: Ameri, Hillgren, Kramer, Myers, Tucker
ABSENT (Excused): Brown (arrived at 5:15 p.m.), Toerge

Staff Present: Kimberly Brandt, Community Development Director; Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; James Campbell, Principal Planner

B. CURRENT BUSINESS

ITEM NO.1 Update to the City's Wireless Telecommunications Facilities Ordinance (PA2012-057)

Code Amendment No. CA2012-004 is an amendment to the Newport Beach Municipal Code (NBMC) to update regulations regarding wireless telecommunication facilities (telecom facilities) on public or private properties. Current regulations contained in Chapter 15.70 (Wireless Telecommunications Facilities) are proposed to be updated and incorporated within Title 20 (Planning and Zoning) of the NBMC, and Chapter 15.70 would be rescinded in its entirety.

Principal Planner Campbell provided a PowerPoint presentation addressing adoption of the existing ordinance, changes in law, previous consideration by the Planning Commission and request for a study session, a previous stakeholder meeting and details of the report. Mr. Campbell noted comments received and stated the intent was to provide an administrative approval class for screened facilities and a streamlined permitting process. He discussed a comment regarding legal, non-conforming facilities. He stated that existing, legally operating facilities would be allowed to continue unchanged and new facilities must comply with the new ordinance and the revised ordinance would include increased clarity. Mr. Campbell discussed staff's recommendation to modify the proposed new antenna classes and definitions to ensure there would be no conflicts between definitions and other ordinance provisions with a proposed new draft.

Mr. Campbell noted technology requirements, stressing the importance of using the "least obtrusive" technology and that the intent of the ordinance is to provide a review process so that facilities are not visually obtrusive and that they provide coverage that the providers need for the community. He addressed location preferences, classifications and eliminating collocation as a class of facilities as well as creating a public right-of-way class. In addition, he discussed prohibited locations, multi-family zones, installations in the public right-of-way, undergrounding vaults, control of public rights-of-way, providing flexibility, general development and design standards, facility heights and related variances, setback standards including the elimination of the proposed "fall zone" setback, public review procedures, application submittal requirements, City license agreements and modifications of existing facilities.

Mr. Campbell stated that staff believes that a revised draft ordinance as outlined in the report would be consistent with State, federal, and case law. He discussed radio frequency emissions and FCC oversight and summarized staff's recommendations. He discussed next steps including returning to the Planning Commission with a final draft at an upcoming meeting after interested parties have an opportunity to review the revised draft.

Commissioner Brown arrived at this juncture (5:15 p.m.).

The Commission discussed the number and description of the proposed antenna classes, Planning Commission jurisdiction and a desire to have the Commission only act on telecom facilities as an appeal authority.

Assistant City Attorney Leonie Mulvihill reported that one of the major changes being considered is to move regulations into the Zoning Code as land-use issues rather than going straight before Council. In doing so, the Commission would need to accept the appeal process that is in place.

Commissioner Tucker commented positively on assigning jurisdiction to someone other than the Planning Commission and that the Commission handles issues when they are being appealed.

Discussion followed regarding this being a land-use issue.

Community Development Director Kimberly Brandt noted that what staff is trying to accomplish is to establish a tiered-level of review and that when there is staff-level approval, no public notice is involved. She added that going through the Zoning Administrator is a noticed, public hearing process. The Zoning Administrator has the option of referring matters to the Planning Commission if it should be found appropriate to do so. In some instances it could save time in processing and if appealed, it will lengthen the process and increase costs. The Zoning Administrator review and subsequent decision could be appealed to the Planning Commission. She added that if staff were to establish part of the Zoning Code under a Planning Commission level of review that might be a preference in adoption of the ordinance because it would save money in time in processing an application.

Commissioner Tucker felt that the body of expertise would be under the Zoning Administrator level. He suggested working on the issue to avoid lengthening the process. He indicated agreement with the appeal process.

Commissioner Ameri commented on the projected percentage of applications that would be processed administratively, by the Zoning Administrator and the Planning Commission. He felt that highly controversial/visible matters should go before the Planning Commission.

Commissioner Brown commented on the ordinance applying to infrastructure changes with regards to wireless communications facilities. He wondered how often providers apply for infrastructure changes in equipment.

Mr. Campbell reported that the City does not contract for the service to be provided, but that they are private companies that come forward to propose facilities within public or private properties or a public right-of-way.

Ms. Mulvihill affirmed that the service providers are private companies and that as technology advances and demands change, the companies react to the market and determine when to deploy or revamp technology. The City serves the need and regulates use of property and use of rights-of-way.

Commissioner Myers indicated that the Planning Commission should be the "court of last resort" and that the ordinance should create an environment where citizens are better served.

Mr. Campbell stated that staff believes that with a properly structured ordinance, it can provide a streamlined process and provide better access for telecom providers.

Assistant City Attorney Mulvihill indicated that the point of the ordinance is that it does not inhibit or preclude provisions of wireless communications services. The City will look to industry representatives to best provide the services desired by the community and that there is a balance between their being able to provide service and being able to provide service as they wish. Staff has attempted to provide a tiered review to facilitate the process.

In response to an inquiry from the Commission regarding the creation of more or less regulation through the proposed ordinance, Mr. Campbell indicated that the amount of regulation really isn't changing but the revised draft as recommended is intended to be simpler and create an administrative class for easier and faster processing.

Interested parties were invited to address the Commission on this matter.

Julian Quattlebaum, Chairman of the Regulatory Committee of the California Wireless Association, felt that three minutes would not provide ample time for comments. Vice Chair Hillgren allowed him ten minutes for his presentation. He commended staff's efforts, provided a brief background and commented on the legal background of the regulation. Mr. Quattlebaum reported that there is a separate scheme for regulation of wireless sites for regular carriers by direction of the FCC to local jurisdictions. He stated there is no need to "strike a balance" between the interests of the community and the interests of the industry because the industry serves the community and serves as a proxy for residents. He noted that new installations are needed because people are demanding those services and he addressed a public safety need and noted there is no conflict between the community and industry interests. He reported that the role of the City is not purely a zoning role because it does not take into account the cost of compliance. He urged that the ordinance include some reference to the financial burden on the members of the industry and ultimately on their customers.

Mr. Quattlebaum commented on the approach taken by staff to promote the least intrusive approach to wireless sighting and felt that it is not balanced. The industry will strive for a "reasonably unobtrusive" site and understands the needs of the community. He addressed new Federal law regarding approval of co-locations and base stations. He felt the ordinance does not address the latter and stated that he has submitted written comments to staff. He asked why facilities in residential areas would be prohibited if they were completely invisible noting that this is where the demand exists.

In response to Commissioner Tucker's inquiry, Mr. Quattlebaum indicated that he felt a provider should be able to go anywhere he/she needs to install a wireless facility and where they feel there is a need.

Discussion followed regarding licensing fees for facilities proposed on City property and it needing to be cost-based.

Ms. Mulvihill explained the licensing fee is only for use of public property and indicated disagreement with Mr. Quattlebaum's comments regarding the fees.

Jim Mosher indicated that this topic is not before the Commission because Council is overburdened with these types of applications. He indicated his belief that the intent is to increase public awareness through public noticing. He disagreed with creating a class that would not require any public notice or input. He felt that comparisons with how other cities regulate wireless facilities would be beneficial and advocates for establishing a "sunset" clause where existing facilities are removed or are brought into conformance in the future. He opined that having a right to do something does not mean that the right cannot be regulated.

Carol Tagayun, AT&T Representative, commended staff for their efforts in addressing the matter, indicated the organization's eagerness to work with the City and expressed the importance of wireless services to the community. She reported that detailed comments will be submitted to the City next week and encouraged the Commission to keep those comments in mind as it proceeds with final decisions.

Susie O'Boyle, NexT G Networks, now Crown Castle, expressed appreciation to the Commission for considering the item and agreed with having public rights-of-way considered as a separate classification, in and of itself. She addressed previous comments and noted that future comments will be presented.

There being no others wishing to address the Commission, Vice Chair Hillgren closed public comments for this item.

Vice Chair Hillgren provided a summary of the issues presented and indicated he would like to have a sense of the quantity of applications being processed at each level and what the various classifications might look like.

Commissioner Ameri felt it was important to discuss locations within public rights-of-way and stated concern regarding objections to undergrounding certain facilities by the various agencies.

Vice Chair Hillgren commented on the need for antennas to be above-ground and to be functional.

Commissioner Tucker suggested that those who want to have input into the text of the ordinance provide exact language to staff for consideration. He agreed with the Planning Commission having jurisdiction on specific, critical issues that are on appeal.

Commissioner Brown indicated the importance of meeting the needs of the community.

Commissioner Myers suggested that an additional study session may be in order relative to public and private property installations, given the growth of wireless devices as communication.

Commissioner Kramer stated agreement with previous comments and added clarification of the term "unobtrusive" needs to be expanded.

Ms. Brandt recommended allowing staff to consider comments provided at this time, prepare a draft to respond to comments and incorporate the suggested changes while allowing time to the Commission and the public to review it prior to returning to a public setting.

C. PUBLIC COMMENTS

None

D. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 6:10 p.m.

The agenda for the Regular Meeting was posted on August 31, 2012, at 2:45 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

Michael Toerge, Chairman

Fred Ameri, Secretary

DRAFT

ADDITIONAL
MATERIALS
RECEIVED

To: Planning_Commission
Subject: Additional Materials Received

Item 1a: Additional Materials Received
Draft Minutes of September 6, 2012 Study Session

From: Brad Hillgren [<mailto:bhillgren@highrhodes.com>]
Sent: Thursday, September 20, 2012 10:36 AM
To: Garciamay, Ruby
Subject: Study Session Minutes for telecommunications

Ruby:

I noticed the minutes indicated I summarized the key discussion points but then didn't include my actual summary. In order to assist the staff as it works on the redrafting of the code and managing the process going forward, I suggest including the following summary be included in the minutes:

1. Commission recognizes these utilities provide necessary/desired services in our community and with appropriate guidelines can/should be processed in an efficient/effective manner for all parties (city and applicants) with a minimum of bureaucracy and a reduction in regulations whenever possible.
2. Commission believes with an appropriate zoning code the staff should be able to efficiently deal with the majority of all applications
3. After the planning commission has held appropriate hearings on the new code, the commission should be involved only "as a last resort" in the event of appeals or highly unusual circumstances
4. in order to facilitate the commission's future consideration of the issue, it requests that staff provide the following:
 - a. A summary of the number of applications for each proposed class over the past few years
 - b. Photographic examples to help clarify what each class looks like so commission can better understand/consider public visibility issues
 - c. A summary of the current, proposed and potential costs resulting from the new code – both in terms of city fees and cost of compliance for screening etc.
5. Commission looks to staff to provide a schedule for proceeding with any necessary future study sessions and final public hearings so this can be moved forward.

Hope this helps

Brad

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